



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 26, 1994

Honorable Judith Zaffirini
Chair

Committee on Health and Human Services
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 94-039

Re: Whether the term "child" in Government Code section 573.024, which defines relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent (ID# 25242)

Dear Senator Zaffirini:

A letter you have submitted with your opinion request describes the following situation:

The ex-wife of a currently sitting trustee of an independent school district seeks employment with that school district as a certified teacher. The trustee and his ex-wife had a child during their marriage. That child is now an adult living independent of the trustee and his ex-wife.

As the letter notes, this situation implicates the statutory prohibitions against nepotism. Chapter 573 of the Government Code provides that a "public official may not . . . vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if . . . the individual is related to the public official within," Gov't Code § 573.041(1), "the second degree by affinity," *id.* § 573.002. The same prohibition applies if the individual is related to another member of the board, *id.* § 573.041(2), within the second degree by affinity, *id.* § 573.002. Section 573.024, which defines "affinity," provides in pertinent part:

(a) Two individuals are related to each other by affinity if:

(1) they are married to each other; . . .

(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage *unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.* [Emphasis added.]

Given section 573.024(b), the letter asks the following:

Can the Board of Trustees of that independent school district, including the trustee who is the ex-spouse of the applicant, vote to hire the applicant, the trustee's former wife, without violating the Nepotism Statute if the "child" is an *adult* living independent of the trustee or his former wife? In other words, does the term "child" for purposes of this statute mean a minor or does the issue of the marriage cease being a child once he/she reaches the age of majority? [Emphasis in original.]

Section 573.024 was enacted in 1991 as part of a revision of now-repealed article 5996h, V.T.C.S., that was intended to clarify that degrees of relationship in Texas are computed by the civil law method. See Acts 1991, 72d Leg., ch. 561, § 1 at 1979; Bill Analysis H.B. 1345, House Comm. on State Affairs (1991). It was later codified in the Government Code as part of a nonsubstantive revision. See Acts 1993, 73d Leg., ch. 268, §§ 1, 47. On its face, subsection (b) extends the relationship by affinity created by marriage following divorce or the death of a spouse "as long as a child of that marriage lives." The statute refers to the life of the child of the marriage, not to the period of the child's minority. Had it wanted to, the legislature could easily have used the words "until the child of that marriage reaches the age of majority," but it did not. Thus, we believe that the legislature intended to extend the relationship by affinity created by marriage following divorce or the death of a spouse for the lifetime of any children of the marriage. Therefore, we conclude that the term "child" in section 573.024 includes an adult child who is no longer a dependent.

Our conclusion is supported by case law and prior attorney general opinions. "Death of the spouse terminates the relationship by affinity; if, however, the marriage has resulted in issue who are still living, the relationship by affinity continues." *Lewis v. O'Hair*, 130 S.W.2d 379, 381 (Tex. Civ. App. 1939); see also *Stringfellow v. State*, 61 S.W. 719, 721 (Tex. Crim. App. 1901) ("Except for the issue resultant of the marriage between deceased and his wife, the death of said wife would have terminated the relationship."); Attorney General Opinions LA-66 (1973); O-3472 (1941); O-2648 (1940); O-2383 (1940); O-1257 (1939). None of these authorities distinguish between offspring who are under and over the age of majority. Indeed, they refer to the "issue" of the marriage, a term which is neutral with respect to age. Although section 573.024(b) uses the term "child," the legislature uses this term throughout the nepotism statute to mean "issue." See Gov't Code §§ 573.022(b), .023(a), (c)(1),(3). Furthermore, as noted above, there is nothing in the legislative history to suggest that the legislature intended to change the long-standing rule that the relationship by affinity created by marriage survives divorce or the death of a spouse for the lifetime of any children of the marriage. For the foregoing reasons, we conclude that chapter 573 of the Government Code prohibits the board of trustees of an independent school district from voting to hire the ex-wife of a trustee regardless of the age and status of the surviving child of the marriage.

S U M M A R Y

The term "child" in section 573.024(b) of the Government Code, which defines relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent. The relationship by affinity created by marriage survives divorce or the death of a spouse for the lifetime of any children of the marriage. Therefore, chapter 573 of the Government Code prohibits the board of trustees of an independent school district from voting to hire the ex-wife of a trustee regardless of the age and status of the surviving child of the marriage.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee